IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 3696 of 2004

Between:

1 I.V.Rama Prakash, S/o.I.V.Chinna Rao, Hindu
R/o.Kakinada, E.G.District.
2 Smt. V.Nalini Devi, W/o.Sai Ram Yachendra, Hindu
R/o.Chennai, Tamilnadu.
3 Smt.J.Rajya lakshmi, W/o.Nrupender Rao,
R/o.Hyderabad.

..... PETITIONERS

AND

1 The District Collector,
E.G.District, at Kakinada.
2 The Special Deputy Collector (Land Acquisition) A.P.Infrastructure Industrial Corporation Limited, Kakinada, East Godavari District.
3 The Land Acquisition Officer & Special Tahsildar for Land Acquisition for ESSAR Gujarat Limited, Kakinada, East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, directing the respondents to pass appropriate orders on the applications dt.15-6-91; 5-9-1993; 10-12-1995; 7-8-1998 and 9-6-2000 made by the petitioners filed U/Sec.18 of the Land Acquisition Act, 1894 for reference to the Prl. Senior Civil Judge, Kakinada, for enhancement of compensation amount to the lands i.e., Ac.8.91 cents in Sy.No.236; in Award No.2/91; Ac.5.57 cents in Sy.No.244 in Award No.1/91 of the 1st petitioner; Ac.1.61 cents in Sy.No.236 of the 2nd petitioner; Ac.1.00 cents in Sy.No.236, of the 3rd petitioner and an extent of Ac.0.49 cents in Sy.No.239 of the father of the petitioners, late Chinna Rao, in Award No.2/91 situated at Vakalapudi village, Kakinada Rural mandal, East Godavari district, on the basis of Award Nos.1 and 2

passed by the Land Acquisition Officer.

Counsel for the Petitioner : MR. CH.DHANAMJAYA

Counsel for the Respondents 1 & 3: GP FOR LAND ACQUISITION

Counsel for the Respondent No.2: Mr. E.Madan Mohan Rao.

The Court made the following :

THE HON'BLE MS. JUSTICE G. ROHINI

W.P.No.3696 of 2004

ORDER:

The petitioners claim to be the owners and possessors of different extents of land, which were acquired under the provisions of the Land Acquisition Act. 1894 for the purpose of establishment of sponge iron and pelletisition plants by ESSAR Gujarat Limited, Kakinada, vide notification dated 5-7-1990. In pursuance thereof, following the due process of law awards have been passed on 15-4-1991 by the Land Acquisition Officer fixing the compensation at the rate of Rs.63,000/- per acre apart from other statutory benefits. It is stated that the petitioners having accepted the compensation under protest, made an application dated 15-06-1991 before the 3rd respondent-Land Acquisition Officer under Section 18 of the Land Acquisition Act requiring to refer the matter to the civil Court for enhancement of compensation. It is claimed that though they made several representations from 15-6-1991 onwards which were sent by certificate of posing and also submitted before the 3rd respondent in person which were acknowledged by the 3rd respondent, no orders have been passed so far for reference to the Civil Court.

Aggrieved by the said inaction on the part of the respondents this writ petition is filed seeking direction to the respondents to pass appropriate orders on the applications made by the petitioners for reference to the Court of the Principal Senior Civil Judge, Kakinada, under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act').

The 2nd respondent-Special Deputy Collector [L.A.] APIIC, Visakhapatnam, filed a counter affidavit stating that the first petitioner alone filed an application under Section 18 of the Act on 15-06-1991 seeking reference to civil Court. However, it was misplaced in the office of the respondent during the transportation of the records to APIIC (L.A.) Unit after the Special Land Acquisition Unit was established for acquisition of the lands for ESSAR Gujarat Unit was disbanded under G.O.Ms.No.378 dated 28-10-1992. Consequently the matter could not be referred to the Court. On a thorough search the said application dated 15-6-1991 has been subsequently traced. It is also stated that the said application was made only by the 1st petitioner and the other petitioners did not make any separate application with regard to their lands. Even in the said application dated 15-06-1991 the 1st petitioner did not mention that he is holding any power of attorney on behalf of his sisters and father and he did not send the copy of the power of attorney. Since, there are no applications by the petitioners 2 and 3 under Section 18 of the Act they are not entitled to seek reference under Section 18 of the Act and therefore the relief as prayed for cannot be granted.

Heard the learned counsel for the petitioner, learned Government Pleader appearing for the respondents and perused the material on record.

Since in the counter affidavit it has been admitted that the 1st petitioner has made an application dated 15-06-1991 seeking reference under Section 18 of the Act and that the respondents have no objection to refer the matter so far as the 1st petitioner is concerned, the only question that remains for consideration is whether there was any application by the petitioners 2 and 3 for reference under Section 18 of the Act and whether a mandamus deserves to be issued to

refer the matter for adjudication by the Court with regard to the claims of petitioners 2 and 3 as well.

It is not in dispute that the petitioners 2 and 3 are the sisters of the 1st petitioner. The case of the petitioners is that the 1st petitioner is holding a General Power of Attorney on behalf of his sisters-petitioners 2 and 3 and that he received the compensation fixed under the awards representing them as a General Power of Attorney holder. However, admittedly the application dated 15-06-91 was made by the 1st petitioner alone. There were no separate applications by the petitioners 2 and 3. Though there was a reference to the extents of the land held by the petitioners 2 and 3 and a joint request appears to have been made on behalf of all the 3 petitioners to refer the matter to Court, the 1st petitioner never stated that he is holding a General Power of Attorney and that the application for reference is made on behalf of the petitioners 2 and 3 also. In the circumstances, I am unable to hold that there was any request by the petitioners 2 and 3 to make a reference under Section 18 of the Act.

The learned counsel for the petitioner while placing reliance upon a decision of the Full Bench of this Court in ***DISTRICT COLLECTOR, KAKINADA, EAST GODAVARI DISTRICT AND OTHERS v. P. NAGABHUSHANA RAO AND OTHERS***[1] contended that the fact that the petitioners 2 and 3 received the compensation awarded under Section 11 of the Act under protest itself shows their intention to seek reference under Section 18 and therefore the respondents are not justified in not considering the case of the petitioners 2 and 3 for reference on a technical objection that there was no separate application by them.

In the above said decision the question that was referred to the Full Bench was whether the claimants who failed to lodge protest at the time of receiving the compensation can file an application within the stipulated time seeking reference to the civil Court and whether acceptance of the amount without protest amounts to waiver of the right to seek reference under Section 18 of the

Act.

The Full Bench having considered the legal position in detail held as under:

> "In the absence of any manner of protest having been specified in the Act and the time when protest is to be lodged, act of filing of an application seeking reference to Civil Court within the period of limitation prescribed under Section 18 of the Act will impliedly infer that the claimant/person interested had accepted the amount with protest. Not expressly lodging protest at the time of receiving amount in such circumstance would not amount to waiver of the right to seek reference under Section 18 of the Act."

In the case on hand the fact that the petitioners 2 and 3 lodged a protest while receiving the compensation is not in dispute. But the question is whether there was any application by them seeking reference under Section 18 of the Act. Hence, the ratio laid down by the Full Bench in ***DISTRICT COLLECTOR, KAKINADA v. P. NAGABHUSHANA RAO AND OTHERS*** (1 supra) has no application at all to the present case.

As expressed above, in the absence of any material to show that there was any application as such by the petitioners 2 and 3 as required under Section 18 of the Act, no Mandamus can be issued compelling the respondents to refer the matter for adjudication by civil Court. However, so far as the 1st petitioner is concerned there shall be a direction to the respondents to refer the matter forthwith under Section 18 of the Act to the Court having jurisdiction on the basis of his application dated 15-06-1991.

The writ petition is accordingly disposed of. No costs.

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G. ROHINI, J

Dated:17-01-2005

LSK

To

1 The District Collector,
E.G.District, at Kakinada.
2 The Special Deputy Collector (Land Acquisition) A.P.Infrastructure Industrial Corporation Limited, Kakinada, East Godavari District.
3 The Land Acquisition Officer & Special Tahsildar for Land Acquisition for ESSAR Gujarat Limited, Kakinada, East Godavari District.

4.2CCs to G.P. for Land Acquisition, High Court of AP Bldgs, Hyderabad (OUT).

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